"बिजनेस पोस्ट के अन्तर्गत डाक शुल्क के नगद भुगतान (बिना डाक टिकट) के प्रेषण हेतु अनुमत. क्रमांक जी. 2-22-छत्तीसगढ़ गजट/38 सि. से. भिलाई, दिनांक 30-5-2001."

पंजीयन क्रमांक "छत्तीसगढ़/दुर्ग/09/2012-2015."

छत्तीसगढ़ राजपत्र

(असाधारण)
प्राधिकार से प्रकाशित

क्रमांक 110] रायपुर, बुधवार, दिनांक 20 मार्च 2013—फाल्गुन 29, शक 1934

कार्यालय मुख्य निर्वाचन पदाधिकारी, छत्तीसगढ़
इन्द्रावती खण्ड, मंत्रालय परिसर, रायपुर

रायपुर, दिनांक 22 मार्च 2013

क्रमांक 42/निर्वा. याचिका/03/2009-13/2206.—भारत निर्वाचन आयोग, नई-दिल्ली द्वारा जारी अधिसूचना संख्या 82/छ.ग./(15/2009)/2011, दिनांक 01 मार्च, 2013 निर्वाचन अर्जी संख्या 15/2009 में छत्तीसगढ़ बिलासपुर उच्च न्यायालय के तारीख 17 अगस्त, 2010 के निर्णय के विरुद्ध दाखिल की गई 2009 की सिविल अपील संख्या 2012 का 4847 में भारत उच्चतम न्यायालय के दिनांक 3 जुलाई, 2012 के निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 116ग 2ख के अनुसरण में निर्वाचन आयोग एतद्द्वारा सर्वसाधारण की जानकारी हेतु प्रकाशित की जाती है.

सुनील कुमार कुजूर,
मुख्य निर्वाचन पदाधिकारी.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली 110001

नई दिल्ली, तारीख 1 मार्च, 2013—10 फाल्गुन, 1934 (शक)

अधिसूचना

सं. 82/छ.ग./(15/2009)/2011.—निर्वाचन अर्जी संख्या 15/2009 में छत्तीसगढ़ बिलासपुर, उच्च न्यायालय के तारीख 17 अगस्त 2010 के निर्णय के विरुद्ध दाखिल की गई 2009 की सिविल अपील संख्या 2012 का 4847 में भारत उच्चतम न्यायालय के दिनांक 3 जुलाई, 2012 के निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 116ग 2ख के अनुसरण में, निर्वाचन आयोग एतद्द्वारा प्रकाशित करता है.

आदेश से,

हस्ता./-
(तपस कुमार)
प्रधान सचिव,
भारत निर्वाचन आयोग.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 4847 of 2012
Arising out of S.L.P. (C) No. 28104 of 2010

Sambhu Prasad Sharma — APPELLANT

VERSUS

Shri Charandas Mahant & Ors. — RESPONDENTS

JUDGMENT

T. S. Thakur, J.

1. Leave granted.

2. This appeal arises out of an order passed by the High Court of Judicature of Chhattisgarh, at Bilaspur whereby Election Petition No. 15 of 2009 filed by the appellant has been dismissed on the ground that the same does not make a concise statement of the material facts on which the appellant relies and hance fails to disclose a cause of action.

3. Election to No. 4 Korba Parliamentary Constituency in the State of Chhattisgarh was held as a part of the general elections of the year 2009. As many as twenty two candidates filed their nomination papers for election from the above constituency but with the withdrawal of nominations by four of such candidates, only seventeen candidates were left in the fray besides the appellant petitioner who contested as an independant candidate and respondent No. 1 set up by the Indian National Congress Party. The margin of victory between respondent No. 1 and Karuna Shukla set up by the Bharti[illegible] Party who emerged as his nearest rival was

around 20,000 votes. The appellant who polled 23136 votes than filed Election Petition No. 15 of 2009 before the High Court of Chhattisgarh at Bilaspur in which he sought a declaration about his having been elected unopposed apart from a declaration to the effect that the nomination papers filed by the remaining 17 candidates had been improperly and illegally accepted. The appellant's case as set out in the election petition primarily was that the nomination papers filed by respondents 2 to 18 were incomplete for want of a proper affidavit required to be filed in terms of the orders passed by this Court in Union of India V. Association for Democratic Reforms and Anr. (2002) 5 SCC 294 and the instructions issued by the Election Commission requiring the candidates to file such affidavits along with their nomination papers. The appellant alleged that while he had filed an affidavit in the prescribed format along with his nomination papers which was found to be in order by the Returning Officer, the nomination papers filed by the remaining candidates were not accompanied by the requisite affidavits in Form 3 ka (iii) thereby rendering the nomination papers incomplete, hence liable to be rejected. An objection to that effect appears to have been raised even before the Returning Officer, who examined and rejected the same in terms of his order dated 31st March, 2009. The Returning Officer held that the nomination papers filed by all the candidates were accompanied by the requisite affidavits and that there was no deficiency in the same to justify their rejection. The election petition questioned the said finding and assailed the order passed by the Returning Officer as being perverse. The appellant alleged that in terms of the order passed by this Court in the judgment referred to above and the directions issued by the Election Commission the essential information required to be furnished in the affidavit particularly whether there were any dues outstanding against the candidate towards any financial institution or the government had not been supplied in the requisite format by the candidates whose nomnation papers were accepted which was reason enough for the rejection of the nomination papers filed by them and declaration of the appellant-petitioner as having been elected unopposed to the Lok Sabha from that constituency.

4. The election petition was contested by the returned candidate by filing an application under Order VII Rule 11 of CPC read with Section 86(1) of the Representation of People Act, 1951. The application alleged that the petition did not disclose any cause of action nor were the provisions of Sections 81 and 82 of the Act complied with. The election petition did not, according to the respondent, contain any averment regarding the existence of any undischarged liability towards any financial institution or the government nor were material facts stated to disclose a cause of action.

5. The High Court has, in terms of the order impugned before us, allowed the said application and dismissed the election petition holding that the petition did not indeed disclose any cause of action and was, therefore, not maintainable. The High Court recorded a finding that the appellant had not annexed affidavits filed by other candidates to demonstrate how the same were not in the format prescribed for the purpose nor was it the case of the election petitioner that the respondents had any un-discharged liability towards any financial institution or the government for that matter. It also relied upon the fact that the Returning Officer had in no uncertain terms recorded a finding that the requirement of filing an affidavit in support of nomination papers containing the requisite information in terms of orders passed by this Court had been complied with in each case and that there was nothing irregular or deficient in the affidavits or nomination papers to call for their rejection. The High Court noted that the returned candidate had also stoutly denied the allegations that the affidavit filed was not in the prescribed form or that there was any distortion or cancealment of information in the same.

6. The requirement of filing an affidavit arises from the decision of this Court in Union of India V. Association for Democratic Reforms and Anr (Supra). This Court had in that case examined the nature and the extent of jurisdiction exercised by the Election Commission under Article 324 of the Constitution and held that the same was wide enough to include all powers necessary for smooth conduct of elections and that the word "elections" was used in a wide sense to include the entire process of election which comprises several stages and embraces several steps in that process. This Court held that the Election Commission could invoke its power under Article 324 till the Parliament brought a suitable legislation on the subject. This Court recognized the right of the voters in this country to know about the particulars and antecedents of the candidates who would represent them in the Parliament where laws concerning their liberty and property may be enacted, and declared that the right of freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution would include the freedom of the voter to cast his vote, for which purpose the voter was

to know everything that would enable him to make the right choice. It was with that salutary object in mind that this Court issued directions to the Election Commission to call for information on affidavit from each one of the candidates seeking election to the Parliament or the State Legislatures as an essential part of his nomination papers furnishing therein information on the following aspects in relation to his/her candidature:

"(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past-if any, whether he is punished with imprisonment or fine.

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or congnizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.

(5) The educational qualifications of the candidate."

7. As a sequel to the above directions the Parliament amended Representation of People Act, 1951 to introduce Sections 33-A and 33-B with Representation of People (Third Amendment) Act 2002. Section 33-A made it obligatory for every candidate to furnish information whether or not he has been accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the Court and whether he has been convicted of an offence other than those referred to in sub-section (1) or sub-section (2) or covered in sub-section (3) of Section 8 and sentenced to imprisonment of one year or more. Sub-section (2) to Section 33-A required a candidate or his proposer to deliver to the Returning Officer an affidavit sworn by the candidate in the prescribed form along with nomination papers in which the information specified above is set out. Section 33-B, however, purported to neutralise the effect of the directions issued by this Court in Union of India V. Association for Democratic Reforms and Anr (supra) and declared that no candidate shall be liable to disclose or furnish any information , in respect of his election, which is not required to be disclosed or furnished under the Act or the Rules made thereunder. The constitutional validity of the above additions to the statute was challened before this Court in People's Union for Civil Liberties (PUCL) and Anr. V. Union of India and Anr. (2003) 4 SCC 399. This Court while upholding the vires of Section 33-A declared Section 33-B to be constitutionally invalid being in violation of Article 19 (1) (a) of the Constitution. This Court reiterated the directions given in Union of India V. Association for Democratic Reforms and Anr (supra) and directed the Election Commission to issue revised instructions keeping in view the observations made in the judgment delivered by this Court. This Court also held that the order issued by the Election Commission relating to the disclosure of assets and liabilities will continue to hold good and be operative although direction No. 4 in so far as verification of assets and liabilities by means of a summary equiry and rejection of nomination papers on the ground of furnishing wrong information or suppression of material information was concerned, the same shall not be enforced. In para 123 (9) this Court observed;

"(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced."

8. Coming to the facts of the present case, the appellant assailed the election on the ground that the affidavits filed by the contesting candidates, were not in the prescribed format. This is evident from the averments made in para 5 of the election petition where the appellant stated thus;

"5. That, on 31st March, 2009, the petitioner filed and objection before the Election Officer, Korba stating that except the petitioner himself, the nomination forms of the other candidates are incorrect

and invalid because the other candidates has not filed form No. 3 (K) (III) affidavits showing debts/ dues of the Government. Due to not filing the affidavit in the required prescribed form their candidature become invalid and deemed to be an incomlete nomination paper within the meaning of section 33 (A) & 33 (B) of the representation Act of the People Act, 1961 which reads as under, the same is enclosed with this petition as 'Annexure P-1'."

9. To the same effect is para 14A of the election petition where the appellant has set out the ground for setting aside the election of the elected candidate in the following words :

"A. The nomination papers filed by Respondents No. 2 to18 were incomplete due to want of proper affidavit whom Respondent No. 1 has accepted and committed material illegality. Above acceptance are contrary to Section 100 (1) D (I) (N) of Representation of People Act, 1951 hence liable to be declared improper and illegal voter voted in their favour would not have noted in their favour which has materially affected the result of this petitioner."

10. In para 14C also the appellant's case was that the nomination papers could not have been accepted without an affidavit disclosing the outstanding government dues as required under the order of this Court in the case of Union of India V. Assoication for Democratic Reforms and Anr (supra). Suffice it to say that the case pleaded by the appellant was not one of complete failure of the requirement of filing an affidavit in terms of the judgment of this Court and the instructions given by the Election Commission but a case where even according to the appellant the affidavits were not in the required format.

11. What is significant is that election petition did not make any averment leave alone disclose material facts in that regard suggesting that there were indeed any outstanding dues payable to any financial institution or the government by the returned candidate or any other candidate whose nomination papers were accepted. The objection raised by the appellant was thus in the nature of an objection to form rather than substance of the affidavit, especially because it was not disputed that the affidavits filed by the candidates showed the outstandings to be nil.

12. The directions issued by this Court, and those issued by the Election Commission make the filing of an affidavit an essential part of the nomination papers, so that absence of an affidavit may itself render a nomination paper non-est in the eye of law. But where an affidavit has been filed by the candidate and what is pointed out is only a defect in the format of the affidavit or the like, the question of acceptance or rejection of the paper shall have to be viewed in the light of sub-section (4) to Section 36 of the Act which reads :

"36 (4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

13. Even the instructions issued to the Returning Officers point out that a nonmination paper shall not be rejected unless the defect is of a substantial character. The instructions issued to the Returning Officers in the Hand Book published by the Election Commission enumerates though not exhaustively, what can be said to be gounds for rejection of the nomination papers. Para 10.1 (VII) reads:

"10.1 You must reject a nomination paper, if ;

xxxxxxxxx

(vii) The nomination paper is not substantially in the prescribed form, or

xxxxxxxxxxx"

14. From the above it is evident that the form of the nomination papers is not considered sacrosanct. What is to be seen is whether there is a substantial compliance of the requirement as to form. Every departure from the prescribed format cannot, therefore, be made a ground for rejection of the nomination paper.

15. In the case at hand, the appellant alleges that the affidavit did not in the prescribed format state whether the candidates had any outstanding liabilities qua financial institutions or the government. Now a departure from the format may assume some importance if the appellant alleged that there were such outstanding liabilities which were concealed by the candidates. That, however, is not the case of the appellant. Any departure from the prescribed format for disclosure of information about the dues, if any, payable to the financial institutions or the government will not be of much significance, especially when the declaration made by the returned candidate in his affidavit clearly stated that no such dues were recoverable from the deponent. The departure from the format was not, in the circumstances, of a substantial character on which the nomination papers of the returned candidate could be lawfully rejected by the returning officer.

16. Coming to the allegation that other candidates had also not submitted affidavits in proper format, rendering the acceptance of their nomination papers improper, we need to point out that the appellant was required to not only allege material facts relevant to such improper acceptance, but further assert that the election of the returned candidate had been materially affected by such acceptance. There is no such assertion in the election petition. Mere improper acceptance assuming that any such improper acceptance was supported by assertion of material facts by the appellant-petitioner, would not disclose a cause of action to call for trial of the election petition on merit unless the same is alleged to have materially affected the result of the returned candidate.

17. In the result this appeal fails and is hereby dismissed but in the circumstances without any order as to costs.

Sd/-

(T. S. Thakur) J.

Sd/-

New Delhi
July 3, 2012

अस्पष्ट **J.**

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

New Delhi, Dated 1st March, 2013—10 Phalguna, 1934 (Saka)

NOTIFICATION

No. 82/CGH/(15/2009)/2011 .— In pursuance of clause (b) of Sub section 2 of Section 116C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order dated 3rd July. 2012 of the Supreme Court of India in Civil Appeal No. 4847 of 2012 filed against the Judgment, dated 17th August 2010 of the High Court of Chhattisgarh Bilaspur in Election Petition No. 15 of 2009.

By order,

Sd/-
(TAPAS KUMAR)
Pr. Secretary,
Election Commission of India.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 4847 of 2012
Arising out of S.L.P. (C) No. 28104 of 2010

Sambhu Prasad Sharma APPELLANT

VERSUS

Shri Charandas Mahant & Ors. RESPONDENTS

JUDGMENT

T. S. Thakur, J.

1. Leave granted.

2. This appeal arises out of an order passed by the High Court of Judicature of Chhattisgarh, at Bilaspur whereby Election Petition No. 15 of 2009 filed by the appellant has been dismissed on the ground that the same does not make a concise statement of the material facts on which the appellant relies and hance fails to disclose a cause of action.

3. Election to No. 4 Korba Parliamentary Constituency in the State of Chhattisgarh was held as a part of the general elections of the year 2009. As many as twenty two candidates filed their nomination papers for election from the above constitutency but with the withdrawal of nominations by four of such candidates, only seventeen candidates were left in the fray besides the appellant petitioner who contested as an independant candidate and respondent No. 1 set up by the Indian National Congress Party. The margin of victory between respondent No. 1 and Karuna Shukla set up by the Bhartiya Janta Party who emerged as his nearest rival was around 20,000 votes. The appellant who polled 23136 votes than filed Election Petition No. 15 of 2009 before the High Court of Chhattisgarh at Bilaspur in which he sought a declaration about his having been elected unopposed apart from a declaration to the effect that the nomination papers filed by the remaining 17 candidates had been improperly and illegally accepted. The appellant's case as set out in the election petition primarily was that the nomination papers filed by respondents 2 to 18 were incomplete for want of a proper affidavit required to be filed in terms of the orders passed by this Court in Union of India V. Association for Democratic Reforms and Anr. (2002) 5 SCC 294 and the instructions issued by the Election Commission requiring the candidates to file such affidavits along with their nomination papers. The appellant alleged that while he had filed an affidavit in the prescribed format along with his nomination papers which was found to be in order by the Returning Officer, the nomination papers filed by the remaining candidates were not accompanied by the requisite affidavits in Form 3 ka (iii) thereby rendering the nomination papers incomplete, hence liable to be rejected. An objection to that effect appears to have been raised even before the Returning Officer, who examined and rejected the same in terms of his order dated 31st March, 2009. The Returning Officer held that the nomination papers filed by all the candidates were accompanied by the requisite affidavits and that there was no deficiency in the same to justify their rejection. The election petition questioned the said finding and assailed the order passed by the Returning Officer as being perverse. The appellant alleged that in terms of the order passed by this Court in the judgment referred to above and the directions issued by the Election Commission the essential information required to be furnished in the affidavit particularly whether there were any dues outstanding against the candidate towards any financial institution or the government had not been supplied in the requisite format by the candidates whose nomnation papers were accepted which was reason enough for the rejection of the nomination papers filed by them and declaration of the appellant-petitioner as having been elected unopposed to the Lok Sabha from that constituency.

4. The election petition was contested by the returned candidate by filing an application under Order VII Rule 11 of CPC read with Section 86(1) of the Representation of People Act, 1951. The application alleged that the petition did not disclose any cause of action nor were the provisions of Sections 81 and 82 of the Act complied with. The election petition did not, according to the respondent, contain any averment regarding the existence of any undischarged liability towards any financial institution or the government nor were material facts stated to disclose a cause of action.

5. The High Court has, in terms of the order impugned before us, allowed the said application and dismissed the election petition holding that the petition did not indeed disclose any cause of action and was, therefore, not maintainable. The High Court recorded a finding that the appellant had not annexed affidavits filed by other candidates to demonstrate how the same were not in the format prescribed for the purpose nor was it the case of the election petitioner that the respondents had any un-discharged liability towards any financial institution or the government for that matter. It also relied upon the fact that the Returning Officer had in no uncertain terms recorded a finding that the requirement of filing an affidavit in support of nomination papers containing the requisite information in terms of orders passed by this Court had been complied with in each case and that there was nothing irregular or deficient in the affidavits or nomination papers to call for their rejection. The High Court noted that the returned candidate had also stoutly denied the allegations that the affidavit filed was not in the prescribed form or that there was any distortion or cancealment of information in the same.

6. The requirement of filing an affidavit arises from the decision of this Court in Union of India V. Association for Democratic Reforms and Anr (Supra). This Court had in that case examined the nature and the extent of jurisdiction exercised by the Election Commission under Article 324 of the Constitution and held that the same was wide enough to include all powers necessary for smooth conduct of elections and that the word "elections" was used in a wide sense to include the entire process of election which comprises several stages and embraces several steps in that process. This Court held that the Election Commission could invoke its power under Article 324 till the Parliament brought a suitable legislation on the subject. This Court recognized the right of the voters in this country to know about the particulars and antecedents of the candidates who would represent them in the Parliament where laws concerning their liberty and property may be enacted, and declared that the right of freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution would include the freedom of the voter to cast his vote, for which purpose the voter was entitled to know everything that would enable him to make the right choice. It was with that salutary object in mind that this Court issued directions to the Election Commission to call for information on affidavit from each one of the candidates seeking election to the Parliament or the State Legislatures as an essential part of his nomination papers furnishing therein information on the following aspects in relation to his/her candidature:

"(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past-if any, whether he is punished with imprisonment or fine.

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or congnizance is taken by the court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.

(5) The educational qualifications of the candidate."

7. As a sequel to the above directions the Parliament amended Representation of People Act, 1951 to introduce Sections 33-A and 33-B with Representation of People (Third Amendment) Act 2002. Section 33-A made it obligatory for every candidate to furnish information whether or not he has been accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by

the Court and whether he has been convicted of an offence other than those referred to in sub-section (1) or sub-section (2) or covered in sub-section (3) of Section 8 and sentenced to imprisonment of one year or more. Sub-section (2) to Section 33-A required a candidate or his proposer to deliver to the Returning Officer an affidavit sworn by the candidate in the prescribed form along with nomination papers in which the information specified above is set out. Section 33-B, however, purported to neutralise the effect of the directions issued by this Court in Union of India V. Association for Democratic Reforms and Anr (supra) and declared that no candidate shall be liable to disclose or furnish any information , in respect of his election, which is not required to be disclosed or furnished under the Act or the Rules made thereunder. The constitutional validity of the above additions to the statute was challened before this Court in People's Union for Civil Liberties (PUCL) and Anr. V. Union of India and Anr. (2003) 4 SCC 399. This Court while upholding the vires of Section 33-A declared Section 33-B to be constitutionally invalid being in violation of Article 19 (1) (a) of the Constitution. This Court reiterated the directions given in Union of India V. Association for Democratic Reforms and Anr (supra) and directed the Election Commission to issue revised instructions keeping in view the observations made in the judgment delivered by this Court. This Court also held that the order issued by the Election Commission relating to the disclosure of assets and liabilities will continue to hold good and be operative although direction No. 4 in so far as verification of assets and liabilities by means of a summary equiry and rejection of nomination papers on the ground of furnishing wrong information or suppression of material information was concerned, the same shall not be enforced. In para 123 (9) this Court observed;

"(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced."

8. Coming to the facts of the present case, the appellant assailed the election on the ground that the affidavits filed by the contesting candidates, were not in the prescribed format. This is evident from the averments made in para 5 of the election petition where the appellant stated thus;

"5. That, on 31st March, 2009, the petitioner filed and objection before the Election Officer, Korba stating that except the petitioner himself, the nomination forms of the other candidates are incorrect and invalid because the other candidates has not filed form No. 3 (K) (III) affidavits showing debts/ dues of the Government. Due to not filing the affidavit in the required prescribed form their candidature become invalid and deemed to be an incomlete nomination paper within the meaning of section 33 (A) & 33 (B) of the representation Act of the People Act, 1961 which reads as under, the same is enclosed with this petition as 'Annexure P-1'."

9. To the same effect is para 14A of the election petition where the appellant has set out the ground for setting aside the election of the elected candidate in the following words:

"A. The nomination papers filed by Respondents No. 2 to18 were incomplete due to want of proper affidavit whom Respondent No. 1 has accepted and committed material illegality. Above acceptance are contrary to Section 100 (1) D (I) (N) of Representation of People Act, 1951 hence liable to be declared improper and illegal voter voted in their favour would not have noted in their favour which has materially affected the result of this petitioner."

10. In para 14C also the appellant's case was that the nomination papers could not have been accepted without an affidavit disclosing the outstanding government dues as required under the order of this Court in the case of Union of India V. Assoication for Democratic Reforms and Anr (supra). Suffice it to say that the case pleaded by the appellant was not one of complete failure of the requirement of filing an affidavit in terms of the judgment of this Court and the instructions given by the Election Commission but a case where even according to the appellant the affidavits were not in the required format.

What is significant is that election petition did not make any averment leave alone disclose material facts in that regard suggesting that there were indeed any outstanding dues payable to any financial institution or the government by the returned candidate or any other candidate whose nomination papers were accepted. The objection raised by the appellant was thus in the nature of an objection to form rather than substance of the affidavit, especially because it was not disputed that the affidavits filed by the candidates showed the outstandings to be nil.

12. The directions issued by this Court, and those issued by the Election Commission make the filing of an affidavit an essential part of the nomination papers, so that absence of an affidavit may itself render a nomination paper non-est in the eye of law. But where an affidavit has been filed by the candidate and what is pointed out is only a defect in the format of the affidavit or the like, the question of acceptance or rejection of the paper shall have to be viewed in the light of sub-section (4) to Section 36 of the Act which reads :

"36 (4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

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xxxxxxxxxxx"

14. From the above it is evident that the form of the nomination papers is not considered sacrosanct. What is to be seen is whether there is a substantial compliance of the requirement as to form. Every departure from the prescribed format cannot, therefore, be made a ground for rejection of the nomination paper.

15. In the case at hand, the appellant alleges that the affidavit did not in the prescribed format state whether the candidates had any outstanding liabilities qua financial institutions or the government. Now a departure from the format may assume some importance if the appellant alleged that, there were such outstanding liabilities which were concealed by the candidates. That however, is not the case of the appellant. Any departure from the prescribed format for disclosure of information about the dues, if any, payable to the financial institutions or the government will not be of much significance, especially when the declaration made by the returned candidate in his affidavit clearly stated that no such dues were recoverable from the deponent. The departure from the format was not, in the circumstances, of a substantial character on which the nomination papers of the returned candidate could be lawfully rejected by the returning officer.

16. Coming to the allegation that other candidates had also not submitted affidavits in proper format, rendering the acceptance of their nomination papers improper, we need to point out that the appellant was required to not only allege material facts relevant to such improper acceptance, but further assert that the election of the returned candidate had been materially affected by such acceptance. There is no such assertion in the election petition. Mere improper acceptance assuming that any such improper acceptance was supported by assertion of material facts by the appellant-petitioner, would not disclose a cause of action to call for trial of the election petition on merit unless the same is alleged to have materially affected the result of the returned candidate.

17. In the result this appeal fails and is hereby dismissed but in the circumstances without any order as to costs.

Sd/-

(T. S. Thakur) J.

Sd/-

New Delhi
July 3, 2012

अस्पष्ट **J.**

संचालक, मुद्रण तथा लेखन सामग्री, छत्तीसगढ़ द्वारा शासकीय क्षेत्रीय मुद्रणालय, राजनांदगांव से मुद्रित तथा प्रकाशित—2013.